negligence may be legitimately inferred from the plaintiff's own showing, defendant need not prove it. *New Omaha Thompson-Houston Electric Light Co. v. Dent,* 68 Neb. 668.

MASTER AND SERVANT—MASTER'S NEGLECT OF STATUTORY DUTY—EFFECT ON SERVANT'S ASSUMPTION OF RISK.—UNITED STATES CEMENT CO. V. COOPER, 82 N. E. 981 (IND.).—*Held,* that the doctrine of assumed risk does not apply where the negligence consists in violating the factory act (*Burns' Ann. St.* 1901, Section 7087), providing that machinery shall be guarded.

There is some conflict of authority as to whether a master may avail himself of the defense of assumption of risk where the injury complained of resulted from his neglect of a duty imposed by statute. Where the defense is forbidden by the statute itself, he cannot of course rely upon it, *Southern R. Co. v. Carson,* 194 U. S. 136, and where there is no such inhibition the weight of authority seems to be to the same effect, *Murphy v. Grand Rapids Veneer Works,* 106 N. W. 211 (Mich.); *Quackenbush v. Wisconsin, etc., R. Co.,* 62 Wisc. 411; *Denver & R. G. R. Co. v. Norgate,* 72 C. C. A. 365; even though the servant knew of the violation of the statute. The extreme case in this direction declares that assumption of risk would nullify the statute. *Narramore v. Cleveland, etc., R. Co.,* 96 Fed. 298. The contrary doctrine holds that knowledge of the violation of the statute constitutes a waiver of its terms and an assumption of risk. *Sweeney v. Central Pac. R. Co.,* 57 Cal. 15; *Spiva v. Osage Coal & Mining Co.,* 88 Mo. 68; *Kiernan v. Eidlitz,* 100 N. Y. Supp. 731. Between these extremes there are several cases holding that risk through the statutory negligence of the master is only assumed when the danger is so great that the facing of it amounts to contributory negligence. *Biles v. Seaboard Air Line R. Co.,* 139 N. C. 528; *Bair v. Heibel,* 103 Mo. App. 621. It is a settled rule, however, that if the object of the statute is other than the protection of the servant, *Fleming v. St. Paul, etc., R. Co.,* 27 Minn. 111, or if it is merely penal, *Knisley v. Pratt,* 148 N. Y. 372; *Nottage v. Sawmill Phœnix,* 133 Fed. 979, the master's neglect of the duty imposed will not prevent his relying on the servant's assumption of risk.

RAILROADS—CROSSING ACCIDENT—PROXIMATE CAUSE.—LOUISVILLE & N. R. CO. V. ARMSTRONG, 105 S. W. 473 (KY.).—*Held,* that where a team was frightened by the carcass of a horse lying on the defendant's right of way, near a road, the killing of the horse by one of the defendant's trains was not the proximate cause of the plaintiff's injuries resulting from the fright of the team.

In *Behling v. S. W. Penn. Pipe Lines,* 160 Pa. St. 359, a proximate cause is defined as one which in natural sequence, undisturbed by any independent cause, produces the result complained of. The negligent and unlawful leaving of any obstruction on or near the right of way and within the highway, although without the traveled portion, in such a manner as to frighten teams of ordinary docility, will make the company liable for damages resulting from such fright. *Pittsburgh, C. & St. L. R. Co. v. Kitley,* 118 Ind. 152; *Jones v. Housatonic R. Co.,* 107 Mass. 261; *Harrell v. Albemarle & P. R. R. Co.,* 110 N. C. 215; *Palys v. Jewett,* 32 N. J. Eq. 302. But, to recover, the *onus* of proving the negligence of the defendant rests upon the plaintiff. *Indianapolis & St. L. Ry. Co. v. Evans,* 88 Ill. 63. And he must show that the defendant knew, or by the use of ordinary care could have known, of the

presence of such obstruction on its right of way in time to have removed it before the plaintiff was injured. *Baxter v. Chicago, R. I. & P. Ry. Co.*, 87 Ia. 488. But the negligence of the defendant is not the proximate cause and in no way contributed to the accident, but was merely concurrent with it. *Selleck v. Lake Shore, etc., Ry. Co.*, 58 Mich. 195; *Bosko v. Delaware, L. & W. R. Co.*, 36 N. Y. Supp. 261.

RAILROADS—DUTY TO LOOK AND LISTEN—SIGNAL FROM FLAGMAN.—UNION PACIFIC R. CO. V. ROSEWATER, 157 FED. 168.—*Held*, that the placing of gates or the stationing of flagmen at railroad crossings in a city is not a duty imposed by statute or municipal ordinance on railroad companies, or voluntarily assumed by them, for the purpose of relieving the traveler on the street from taking those precautions for his own safety required by the long-settled rule of law, but as an additional precaution to meet the increased peril resulting from local conditions in cities; and open gates, or a signal from a flagman to cross, does not relieve a traveler from the duty to look and listen before entering upon the tracks.

A failure to stop, look, and listen before crossing an unguarded railway track is evidence of negligence. *Schofield v. Chicago, etc., Ry. Co.*, 114 U. S. 615. And according to the Pennsylvania rule it is negligence *per se* which will bar recovery, unless it affirmatvely appears that it did not approximately contribute to the injury. *Penna. R. Co. v. Beale*, 73 Pa. St. 504; *Philadelphia, etc., R. Co. v. Hogeland*, 66 Md. 149. But where the guard stationed at the crossing directs the traveler to cross, in no jurisdiction is the failure to stop, look, and listen, negligence as a matter of law. It is a question of fact for the jury. *Conaty v. New York, etc., R. Co.*, 164 Mass. 572; *Kane v. Railroad*, 132 N. Y. 160. And in Ohio the Supreme Court of the State has taken a more emphatic position by declaring that an open gate, with the gateman in charge, is notice of a clear track and safe crossing; and it is not negligence to pass upon the tracks without stopping to listen. *Railroad v. Schneider*, 45 Ohio St. 678.

TORT—NEGLIGENCE—LIABILITY—INTEREST IN PLACE.—HOLLIS V. KANSAS CITY MO. RETAIL MERCHANT'S ASS'N ET AL., 103 S. W. (MO.) 32. Where an association gave a street fair in which an amusement company furnished their appliances for amusements, including gondolas, similar to a merry-go-round, under a contract by which the fees for riding on the gondolas collected by the company were divided between the association and the company, and where the association had general charge of all the grounds and took an active part in distributing advertisements of the amusements, *held*, that the association, as well as the company, was liable for an injury to one who was riding on the gondolas, caused by negligence in the construction, operation and management thereof.

The duty which is incident to the ownership of premises imposes an obligation not only that the proprietor shall not so use them, or create such conditions thereon that danger to others will result, but that he shall not permit third persons so to use them as to create such conditions thereon. *Boston Beef Packing Co. v. Stevens*, 12 Fed. 279; *Bohier v. Dienhart Harness Co.*, 19 Ind. App. 489; *Kelly v. Cohoes Knitting Co.*, 8 N. Y. App. Div. 156. Where a person owes a duty with reference to the safety of premises, structures, or appliances, he cannot excuse himself from performance by showing